

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

11-2-85
30516

FILE: B-216724

DATE: February 25, 1985

MATTER OF: Gentex Corporation

DIGEST:

1. Bidder's failure to acknowledge an amendment to an IFB was a minor informality or irregularity which could be waived or cured where the amendment had no effect on quantity, quality or delivery and would slightly decrease price if it affected it at all.
2. IFB specifically provided government's estimated weights and dimensions for evaluation of transportation costs and IFB specifically stated that such estimate would be used for evaluation purposes if the bidder failed to provide such information. Under these circumstances, GAO rejects bidder's claim that its omission of information on weight and dimensions should have been evaluated as an offer to transport items without cost to the government.
3. Bidder's allegation that Air Force used unrealistic maximum guaranteed dimensions in IFB for evaluation of transportation costs is untimely where the objections were first raised after bid opening.
4. Contention that successful bidder provided inaccurate low guaranteed maximum shipping weight and dimensions will not affect propriety of award, even if allegations were correct. Practice of bidders intentionally using guaranteed shipping weight and dimensions which are less than actual weight and dimensions is considered a permissible alternative to reducing the price for the procured item.

Gentex Corporation (Gentex) protests the award of a contract to Scott Aviation (Scott) under invitation for bids (IFB) No. F41608-84-B-0142 issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas. Gentex

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contends that it and not Scott submitted the low responsive bid under the solicitation. Gentex also claims bid preparation costs.

The protest and the claim are denied.

Gentex contends that Scott's bid should have been rejected as nonresponsive because Scott failed to acknowledge prior to bid opening its receipt of amendment No. 0001 to the IFB. In addition, Gentex contends that it and not Scott submitted the low bid under the solicitation. In this connection, Gentex objects to the agency's evaluation of transportation costs resulting in the determination that Scott submitted the low bid.

The IFB requested bids on an f.o.b. origin basis for 26,120 oxygen mask valve assemblies. Bids were received from two companies--Gentex and Scott.

We will first consider Gentex's contention that Scott's bid was nonresponsive because Scott had not acknowledged receipt of amendment No. 0001 to the IFB. That amendment made two changes to the solicitation: (1) it completed the "Qualified Products - End Items" clause by inserting the qualified products list (QPL) number and by providing the name and address of the specification preparing activity and (2) it changed the packing requirements for the valves by lowering the required packing level from "B" to "C." The agency determined that Scott's failure to acknowledge amendment No. 0001 prior to bid opening was a minor informality or irregularity which did not render Scott's bid nonresponsive. The changes were found to have either no effect or a negligible downward effect on price and no effect on quantity, quality, or delivery of the items to be provided. The agency advises that subsequent to its determination that Scott's failure to acknowledge amendment No. 0001 was only a minor informality or irregularity, it mailed Scott a copy of the amendment. Scott, which apparently had not received the amendment prior to bid opening, agreed to the changes in the amendment.

We agree with the agency that Scott's failure to acknowledge amendment No. 0001 did not affect its bid's responsiveness. The failure of a bidder to acknowledge receipt of an amendment may be waived or allowed to be cured by the bidder where the amendment has either no effect or merely a negligible effect on price, quantity,

quality, or delivery of the item bid upon. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.405 (1984). We believe that the changes made by amendment No. 0001 to section M-1 of the solicitation did not affect the price, quantity, quality or delivery of the valves concerned since the agency advises that the information concerning the QPL was already known to Scott, which is a qualified source for the valve. Gentex does not dispute that Scott is a qualified source and has not challenged the agency's position that this information was known to the bidder even in the absence of the amendment. Gentex, however, asserts that Scott's failure to acknowledge the amendment rendered Scott's bid nonresponsive since the change in the packing requirement had an effect on price. As set forth above, the agency determined that the changing of the packing requirement from level "B" to level "C" would have either no effect on price or a negligible downward effect, since, in some cases, the lower level of packing results in a slight decrease in price. Thus, the agency determined that Scott's failure to acknowledge the change in packing requirements prior to bid opening was a minor informality or irregularity. See FAR, § 14.405. Furthermore, the failure of a low bidder to acknowledge an amendment which merely results in a decrease in the cost of performance should be waived as a minor informality. Conrad Industries, Inc., B-213974.2, Aug. 7, 1984, 84-2 C.P.D. ¶ 156.

Gentex also contends that it and not Scott submitted the low bid under the solicitation. The record shows that Gentex submitted the low unit price of \$8.47 per valve while Scott bid a unit price of \$8.50. However, upon evaluating the two bids by factoring costs of transportation of the valves to the specified destination, the agency determined that Scott had submitted the lower bid by a total of \$372.70. The agency's evaluation of the two bids was as follows:

	Gentex	Scott
Total price of valves	\$221,236.40	\$222,020.00
add transportation costs	<u>1,458.53</u>	<u>302.23</u>
total evaluated price	\$222,694.93	\$222,322.23

Gentex asserts that the agency acted improperly in evaluating its bid by adding \$1,458.53 for transportation

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costs to its bid price. Furthermore, Gentex contends that the agency erroneously added a transportation cost of only \$302.23 to Scott's bid, an amount which does not accurately reflect the costs of transporting the valves.

Section F-73 of the IFB, entitled "Guaranteed Maximum Shipping Weights and Dimensions," provides in part as follows:

"(a) Each offer will be evaluated to the destination specified by adding to the f.o.b. origin price all transportation costs to said destination. The guaranteed maximum shipping weights and dimensions of the supplies are required for determination of transportation costs. The offeror is requested to state weights and dimensions as part of the offer. If separate containers are to be banded and/or skidded into a single unit, details must be described. If delivered supplies exceed the guaranteed maximum shipping weights or dimensions, the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on offeror's guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for offer evaluation purposes based on correct shipping data.

"(b) If the offeror fails to state guaranteed maximum shipping weights and dimensions for the supplies as requested, the Government will use the estimated weights and dimensions, below, for evaluation; and the Contractor agrees this will be the basis for any reduction in contract prices as provided in this clause. The Government's estimated weights (and dimensions, if applicable) are as follows: . . ."

The IFB provided that the estimated weight and dimensions for the containers were respectively "0.5 lbs" and "1 X 1 X 2" (inches) per container. Although Gentex now states in its protest that these dimensions are unrealistically small, in its bid, Gentex did not submit guaranteed maximum shipping weight and dimensions for the

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valves. Accordingly, as provided by paragraph (b) of section F-73 of the IFB, the agency evaluated Gentex's bid by using the weight and dimensions set forth in the solicitation for determining the transportation costs. Gentex states that the dimensions of each valve are 2-1/2 inches by 1-1/2 inches by 1-1/2 inches and that, considering the packaging and packing requirements set forth in the solicitation, it believes, based on its prior experience, that the minimum size package required for each valve is a 5-inch-by-5-inch vapor-proof envelope. Gentex adds that these dimensions would be even larger when the valve units are packed in shipping containers. Gentex states that since the dimensions of the containers set forth in the IFB were smaller than the actual size of an individual valve, it presumed that by omitting information on guaranteed maximum shipping weights and dimensions, no additional charge for transportation would be added to its bid. This was its "intention," Gentex argues, in not inserting in its bid guaranteed maximum shipping weights and dimensions differing from the government's estimate.

We do not agree with Gentex that the omission in its bid of information on guaranteed weight and dimensions should be construed as meaning that transportation of the procured items would be without cost to the government. As set forth above, the IFB clearly provided in section F-73 that if the offeror failed to state guaranteed maximum shipping weights and dimensions, the government would use the shipping weight and dimensions set forth in the solicitation for the purpose of bid evaluation. Given the express notice contained in the IFB as to the exact consequences of a bidder's omission of information on guaranteed weight and dimensions, we see no merit in Gentex's contention that the omission of such information was intended to mean that transportation would be without cost to the government. Accordingly, we find that the agency's use of the maximum shipping weights and dimensions contained in the IFB to evaluate Gentex's bid was proper in view of Gentex's failure to provide such information. See Patty Precision Products Company, B-188469, July 25, 1977, 77-2 C.P.D. ¶ 44.

We note that the agency advises that prior to bid opening, Gentex neither sought clarification of, nor objected to, the IFB's provisions relating to guaranteed shipping weight and dimensions. Our Office will not now consider any objections which Gentex has to the specific guaranteed weights and dimensions listed in the

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solicitation. Protests which are based on alleged improprieties in the specifications contained in an IFB must be filed with either our Office or the contracting office prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984); Certified Mechanical Contractors, Inc., B-215411, June 20, 1984, 84-1 C.P.D. ¶ 654.

Lastly, Gentex contends that Scott's bid was improperly evaluated because the dimensions listed by Scott in its bid relate only to the packaging of individual valves and do not reflect actual shipping weights and dimensions. In its bid, Scott had indicated that the maximum guaranteed shipping weight and dimensions for each container would be 0.11 pounds and 2 inches by 2 inches by 3 inches.

Our Office has emphasized that there are two basic purposes of the guaranteed maximum shipping weight clause-- to enable the government to accurately determine its total cost under a contract and to establish a basis upon which to reduce the contract price in the event that the maximum guaranteed weight or dimensions are exceeded. See Star Line Enterprises, Inc., B-210732, Oct. 12, 1983, 83-2 C.P.D. ¶ 450.

We have held that it is proper for bidders to use guaranteed shipping dimensions which are less than the actual dimensions as a permissible alternative to reducing the price for the item itself as a means of meeting competition. General Fire Extinguisher Corporation, B-186954, Nov. 15, 1976, 76-2 C.P.D. ¶ 413, and Capital Industries, Inc., B-190818, July 7, 1978, 78-2 C.P.D. ¶ 17. We have recognized that the guaranteed maximum shipping weights and dimensions clause, such as is set forth in section F-73 of the IFB, which provides for the reduction of the contract price where the bidder's guaranteed maximum shipping weight and dimensions are exceeded, operates to equalize any advantage that might come from a bidder's understating the guaranteed shipping weight or dimensions. See Capital Industries, Inc., B-190818, supra, 78-2 C.P.D. ¶ 17 at 5. Accordingly, even if Scott did in fact understate its shipping weight and dimensions as Gentex alleges, Scott's bid would still be for evaluation on the basis of the weight and dimensions specified by Scott.

In view of our conclusion, Gentex is not entitled to recovery of its bid preparation costs. Jarrett S. Blankenship Co., B-213473, June 25, 1984, 84-1 C.P.D. ¶ 662.

for Seymour Efron
Harry R. Van Cleve
General Counsel